Supreme Court, U.S.
FILED

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NO._____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

PATRICK BOOTH, JR.,
Petitioner,

V.

THE STATE OF TEXAS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI SEEKING REVIEW OF A CRIMINAL JUDGMENT OF THE LOWER STATE OF TEXAS COURTS

PETITION FOR WRIT OF CERTIORARI

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34pp

QUESTION PRESENTED

Whether during an unlawful search and seizure, the discovery of an outstanding arrest warrant establishes sufficient attenuation to avoid the exclusionary rule as to direct (not secondary) evidence.

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OPINION BELOW

The opinion of the Court of Appeals for the First District of Harris County, Texas is attached. (*See*, appendix 1). Because petitioner's petition for discretionary review to the Texas Court of Criminal Appeals was refused, no opinion was issued. (See, appendix 3).

JURISDICTION

Petitioner was found guilty of unlawful possession of a firearm by a felon in the 184th District Court of Harris County, Texas and judgment was entered on April 17, 1995. The trial court judgment was affirmed by the Court of Appeals for the First District of Texas on January 29, 1996 (see, appendix 1), rehearing was timely filed on February 5, 1996 (see, appendix 2), and overruled on February 8, 1996 (see, appendix 2). Petitioner timely filed his petition for discretionary review on March 8, 1996 (see, appendix 3), which the Texas Court of Criminal Appeals refused on June 19, 1996 (see, appendix 3). The petition for writ of certiorari will be timely filed on September 17, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The following Constitutional provisions are involved in this case:

1. *The Fourth Amendment.*

   The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. amend. IV.

2. *The Fourteenth Amendment, Sec. 1.*

   All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of like, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend. XIV, sec. 1.

STATEMENT OF THE CASE

Petitioner was charged with the crime of felon in possession of a weapon. The case was tried to the court which found petitioner guilty and sentenced him to 28 years in prison. Prior to trial, petitioner filed a motion to suppress the weapon in question, based on the Fourth and Fourteenth Amendments to the United States Constitution, which was denied. (TR p. 13-15 and SF V.3, p.65, l.25). Petitioner appealed the denial of the motion to suppress. The Court of Appeals for the First District of Texas delivered its opinion and held that the initial detention of appellant was illegal. (*See*, appendix 1, p.8). Nevertheless, the Court affirmed the judgment of the trial court because an outstanding warrant for petitioner's arrest was discovered after he was illegally detained. (*See*, appendix 1, p.8). The Texas Court of Criminal Appeals refused petitioner's petition for discretionary review. (See, appendix 3).

ARGUMENT

The lower court holding that the discovery of evidence through an illegal detention is attenuated by the discovery of an outstanding arrest warrant was based on *dicta* in *Brooks v. State*, 830 S.W.2d 817, 821 (Tex.App.-Houston [1st Dist.] 1992, no pet.). *Brooks* was based on *Johnson v. State*, 496 S.W.2d 72, 74 (Tex.Crim.App. 1973) and *Reed v. State*, 809 S.W.2d 940, 945 (Tex.App.-Dallas 1991, no pet.). This case, *Brooks*, *Johnson* and *Reed* conflict with *State v. Ellwood*, 757 P.2d 547 (Wash. App. 1988), *People v. Smith*, 514 N.Y.S.2d 201, 69 N.Y.2d 313 (1987), *People v. Schoondermark*, 717 P.2d 504, 506 (Colo. 1985), and *State v. Crossen*, 21 Or.App. 835, 536 P.2d 1263 (1975).

This case, *Brooks*, *Johnson* and *Reed* also address an important question of federal law which has not been, but should be, settled by this Court. Moreover, these cases have decided a federal question in a way that conflicts with this Court's exclusionary rule jurisprudence to such a degree as to warrant this Court settling the issue presented in this case.

This Court's Attenuation Doctrine Jurisprudence

Application of the attenuation doctrine forecloses reliance on the exclusionary rule. The application here is so important because of its ease of abuse. For example, an overzealous police officer could routinely detain groups of "suspects"

(here black men standing in front of a convenience store in a "bad" area) for no other reason than to check their identification in the hope of finding an outstanding warrant so as to convert an illegal search and seizure into a legal one. Meanwhile, the entire group suffers serious constitutional violations. To avoid these potential abuses, the totality of the circumstances should be considered and not just the the discovery of an outstanding warrant as this case, *Brooks*, *Johnson* and *Reed* permit.

This Court instructs that the test to be applied when considering an attenuation question is, "whether, granting establishment of the primary illegality, the evidence to which [the] instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). In applying this test, emphasis should be placed on whether exclusion under the facts and circumstances of a particular case will further the primary purpose of the exclusionary rule, i.e. deterring future official misconduct. *United States v. Calandra*, 414 U.S. 338, 347 (1974); *United States v. Ceccolini*, 435 U.S. 268, 276-277 (1978).

The attenuation doctrine was first announced in *Nardone v. United States*, 308 U.S. 338, 341 (1939), where this Court stated that, while "sophisticated argument may prove a causal connection" between

information obtained through the illegal search and the challenged evidence, the court may determine "as a matter of good sense [that] such connection may become so attenuated as to dissipate the taint." *Id.*; *see also Wong Sun*, 371 U.S. at 491. Here, no sophisticated argument need be made to link the discovery of the gun with the illegal detention of petitioner. The police intended to investigate petitioner "and work it from there", although they had no basis to suspect appellant of any crime. (SF V. 2, p. 21).

In *Brown v. Illinois*, 422 U.S. 590 (1975), this Court enunciated various factors to be considered when determining whether there has been sufficient attenuation to dissipate the taint:

> "No single factor is dispositive.... The *Miranda* warnings are an important factor.... [Also important are t]he temporal proximity of the arrest and the confession, the presence of intervening circumstances (citation), and particularly, the purpose and flagrancy of the official misconduct." 422 U.S. at 603.

Additionally, the type of evidence being challenged must be considered. *Ceccolini*, 435 U.S. at 278-279. No single factor is sufficient to show attenuation. The totality of circumstances must be viewed to determine whether the attenuation of the taint in the particular case is sufficient to permit the use of the challenged evidence. *Id.* at 274-279. All circumstances should be analyzed.

In this case, *Brooks*, *Johnson* and *Reed*, only the fact that there was an outstanding arrest warrant was considered. This per se attenuation rule through discovery of an outstanding warrant is wrong and flies in the face of this Court's prior attenuation doctrine cases. Additional analysis should be conducted. The fact of the discovery of an outstanding warrant is but one factor to be considered when making the attenuation analysis. Additional facts and circumstances which the Texas Court of Appeals failed to consider are:

1. The evidence in question was discovered shortly after the illegal detention. This Court instructs that all other factors being consistent, the more time between the unlawful police conduct and the discovery of the evidence in question, the more likely attenuation has occurred. *Wong Sun*, 371 U.S. at 486; *Brown*, 422 U.S. at 603; *Ceccolini*, 435 U.S. at 279; *Dunaway v. New York*, 442 U.S. 200, 212 (1979); *Rawlings v. Kentucky*, 448 U.S. 98, 106 (1980). The short period here underscores the likelihood that the unlawful conduct resulted in the discovery of the gun. Were the gun's discovery further removed from the unlawful conduct, attenuation would be more plausible.

2. The conduct and motive of the officers in violating petitioner's rights. These are important factors against attenuation where, as here, even the police acknowledged the purpose of their action was for investigation and questioning.

Brown, 422 U.S. at 603. For example, in *Ceccolini*, an officer entered a store during his break and acted without the intent of finding a willing and knowledgeable witness to testify against the store owner. The suspect attempted to suppress the testimony of the witness found in the store by the officer. This Court held that the testimony was admissible. Here, the officers conducted a clandestine surveillance of petitioner and the other target subject. Their intentions in doing so, and in approaching petitioner were to conduct an investigation of appellant and his companion. After the stake-out went cold the officers approached, not merely to ask questions, but to "ID them". The officers said they decided "[t]o pull up and find out their identification, who they are, and we work it from there." (SF vol.2, p.21). Moreover, the officers did not tell petitioner he was free to leave.[1]

3. The gun was first seen by one officer after petitioner had been patted down by another officer. It was first seen well after the officers began chasing

[1] Whether the gun was "come at by exploitation of the illegality or instead by means sufficiently distinguishable to be purged of the primary taint" is the most important factor in the analysis of the attenuation doctrine because it goes to the core of the competing concerns of Fourth Amendment jurisprudence. *Wong Sun*, 317 U.S. at 488. The Texas Court of Appeals failed to discuss this factor at all in its opinion.

appellant. Petitioner ran after he had been illegally detained. Had the officers not chased petitioner, they would not have found the gun. (SF vol.2, p.24-25). Flight alone is insufficient to justify an investigatory detention. *Wong Sun*, 371 U.S. at 483.

4. The evidence in question is direct, primary evidence. Derivative evidence is more likely to be acquired in spite of the illegal detention. For example, excluding live-witness testimony often will inflict greater costs than excluding inanimate evidence. *Ceccolini*, 435 U.S. at 278-279. In order for live-witness testimony to be excluded, a closer, more direct causal link between an illegal search or seizure must be shown than that necessary to exclude inanimate evidence. *Ceccolini*, 435 U.S. at 278-279. In that regard, few cases exist wherein the attenuation doctrine has been used to "save" primary evidence from the exclusionary rule. This is because the exclusionary rule's delicate balance of competing interests -- the interest in aggressive law enforcement and the interest in protecting individual rights -- militates in favor of law enforcement when the evidence lost is live testimony versus inanimate evidence. In short, where derivative evidence and primary evidence is the same distance from the illegality, the primary evidence will be excluded whereas the derivative evidence will not. The primary evidence weighs less against the law enforcement side of the

scale of competing interests than does the derivative evidence. This is because derivative evidence usually manifests itself in the form of confessions, photographs, discovery of third party witnesses, or other facts circumstantially establishing the crime[2].

Out of state cases regarding warrants discovered after a Fourth Amendment violation

State v. Ellwood, 757 P.2d 547 (Wash. App. 1988) presents facts and law similar to this appeal. There the defendant and his companion were approached by an oficer who asked what they were doing in the area. *Id.* at 548. Unsatisfied with the responses the officer told the two to "wait right here" while he went to his patrol car to conduct an outstanding warrant check. *Id.* at 548. The check revealed a warrant for defendant, who was arrested and searched. *Id.* at 548. Cocaine and a measuring scale was discovered, for which defendant was charged. *Id.* at 548. The initial detention was held to be unconstitutional. *Id.* at 550. The court also held that the connection between the illegal seizure and the discovery of the cocaine and measuring scale was not sufficiently attenuated by the discovery of the outstanding warrant so as to dissipate

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[2] Indeed, most if not all attenuation cases deal with derivative evidence, not primary evidence.

the taint. *Id.* at 550. In short, the evidence was held inadmissible. *Id.* at 550.

Out of state cases regarding exclusion of primary vs. derivative evidence

In *People v. Smith*, 514 N.Y.S.2d 201, 69 N.Y.2d 313 (1987), a gun was discovered in the defendants' truck after an unconstitutional search and seizure. Shortly after the defendants' arrest, in a routine registration check, the police learned that the truck was stolen and the defendant who was driving's license had expired. The court held that to allow the evidence to be used at trial "would be an unacceptable dilution of the exclusionary rule." Id. at 204. Moreover, the court wrote that "in declining to apply the inevitable discovery rule to primary as distinguished from secondary evidence, failing to exclude wrongfully obtained primary evidence 'would encourage unlawful searches in the hope that probable cause would be developed after the fact'". *Id.* at 204-5. *See also People v. Schoondermark*, 717 P.2d 504, 506 (Colo. 1985) (stating the inevitable discovery rule is most frequently applied to purge the taint from derivative evidence, not primary evidence which is the direct product of an illegal search).

In *State v. Crossen*, 21 Or.App. 835, 536 P.2d 1263 (1975), the court held under circumstances similar to those in this case, that the discovery of a warrant does not mandatorily require admission of the evidence complained of. There, while police

were making a radio check with headquarters to see if the defendant was wanted, one officer searched the defendant and found drugs. Moments later the police received a radio response that there were three outstanding felony warrants for the defendant's arrest. The State argued that the drugs should be admissible under the "inevitable discovery" rule. The court wrote:

> "To dilute the exclusionary rule in this manner would defeat one of the purposes of the rule, i.e., to discourage illegal police conduct. Instead it would encourage unlawful searches in the hope that probable cause would be developed after the fact. The inevitable discovery rule has been applied only to purge the taint from derivative, not primary, evidence and we see no reason in this case to extend it to the later." 536 P.2d at 1264.

Conclusion

Here, the gun was discovered because of the exploitation of the illegal detention, not because of the outstanding warrant. By the officers' own admission the illegal detention was exploited. (SF vol. 2, p.21). Indeed, the very nature of the officers' acts were exploitive. Moreover, the gun was found shortly after the illegal detention. Petitioner's coerced presence was unlawfully required and this coerced presence led to the discovery of the gun. The connection between the unlawful

detention and the seizure of the gun do not sufficiently attenuate the taint of the unlawful detention. Additionally, the evidence in question was primary evidence. All of these facts and circumstances should have been considered when determining whether the discovery of the gun was independent of the taint of the illegal detention.

The conflicting state opinions and the importance of the constitutional questions presented warrant review of this case by this Court. Otherwise, the Court will be placing its seal of approval on the pernicious notion rejected in *Wong Sun* "that a search unlawful at its inception may be validated by what it turns up." 371 U.S. at 484.

Respectfully submitted,

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APPENDIX 1

Judgment affirmed and Opinion filed January 29, 1996

In The
Court of Appeals
For The
First District of Texas

No. 01-95-00433-CR

On Appeal form the 184th District Court
Harris County, Texas
Trial Court Cause No. 686062

OPINION

Appellant, Patrick Booth, Jr., appeals his conviction of unlawful possession of a firearm by a felon. Following the trial court's denial of his motion to suppress evidence, appellant plead not guilty to the offense charged and true to two enhancement allegations. The trial court found appellant guilty of the offense charged. The trial judge assessed punishment at 28-years confinement in prison.

In one point of error, appellant argues that the trial court erred in denying his motion to suppress evidence in that the evidence was obtained as a result of an illegal detention.

Fact Summary

At approximately 8:30 p.m., on February 6, 1995, Chief Knox of the Galena Park Police Department, while on patrol, stopped at a convenience store for a drink. While there, Chief Knox was approached by an individual who informed him that some people at the strip center (known as "the front") were selling drugs and had guns. The front consists of a convenience store, liquor store and a hamburger stand. The front is an area commonly known for its drug trafficking where several felony arrests have been made.

Chief Knox informed Officers Cates and Berlingeri that he was going to obtain a pair of binoculars, move to an area across the street from "the front," and observe the area for suspicious activity. Chief Knox observed several men playing dominoes and cards and drinking beer in front of the hamburger stand. He also noticed appellant and another man motioning to cars; it looked as if they were trying to sell drugs. Several cars stopped, and the passengers got out and went inside both the store and hamburger stand.

Chief Knox was suspicious although he did not see any overt illegal activity. Chief Knox then instructed the other officers to go and "ID them," which means "to pull up and find out their identification, who they are, and we work it from there." Appellant and the other man willingly submitted their driver's licenses to Officers Cates and Berlingeri. No physical force was used in obtaining their identification and that the men were free to leave if they chose to do so.

Officer Berlingeri called the police dispatcher to determine if either of the men had outstanding warrants. After two to five minutes, the dispatcher responded that appellant and his companion had possible outstanding arrest warrants. At this time, Cates

performed a pat-down of appellant's front and rear pockets and found no weapons.

According to Cates, prior to arresting an individual, officers are required to receive confirmation of the outstanding warrants from Austin. Confirmation of appellant's companion's warrant was received, and he was placed under arrest and put in the back seat of the patrol unit. While waiting for confirmation of appellant's warrant, appellant "took off running."

While running from the officers, appellant fell, at which time Chief Knox saw an object fall out of appellant's waistband. Appellant got up and continued running until Officer Berlingeri caught and tackled him.

Chief Knox then went over to the area where he had seen the object fall and found a nine millimeter pistol. Later, the gun was fingerprinted and the prints found were those of appellant.

Standard of Review

At the hearing on the motion to suppress, the trial judge is the sole fact finder, and as such, the trial judge may believe or disbelieve all of or any part of any witness's testimony. *Salazar v. State*, 893 S.W.2d 138, 140 (Tex.App.--Houston [1st Dist.] 1995, pet. ref'd). A trial court's ruling on a motion to suppress will not be set aside absent a clear abuse of discretion. *Santos v. State*, 822 S.W.2d 338, 339 (Tex.App.--Houston [1st Dist.] 1992, pet. ref'd) (citing *Maddox v. State*, 682 S.W.2d 563, 564 (Tex. Crim. App. 1985)). This Court views the evidence in the light most favorable to the ruling of the trial court, and any finding supported by the record will not be overturned on appeal. *Id.*

Illegal Detention

Appellant argues that the acts of Officers Cates and Berlingeri constitute an illegal investigative detention in that no

reasonable suspicion existed to support the detention. Further, appellant contends the subsequent discovery of the weapon by the officers was tainted by this illegal detention and should not have been allowed into evidence.

Not all encounters between police and citizens invoke the protection of the fourth amendment because police, like anyone else, may ask questions of their fellow citizens. *Peterson v. State*, 857 S.W.2d 927, 930 (Tex.App--Houston [1st Dist.] 1993, no pet.) (citing *Walton v. State*, 827 S.W.2d 500, 502 (Tex.App.--Houston [1st Dist.] 1992, no pet.)). Only when questioning becomes a detention, however brief, must it be supported by reasonable suspicion under the fourth amendment. *Id.* There is no per se rule as to when police questioning amounts to a detention. *Id.* Even when officers have no reasonable suspicion that an individual has engaged in illegal conduct, they may generally ask questions of the individual and ask to examine his identification so long as the officers do not imply that compliance is required. *Id.*

No fourth amendment stop or detention occurs if a police officer approaches a person in a public area and asks questions, as long as the person is free to walk away. *Maldonado v. State*, 853 S.W.2d 746, 748 (Tex.App.–Houston [1st Dist.] 1993, no pet.). However, an investigative stop requiring reasonable suspicion occurs when a police officer not only approaches the person and asks questions, but also restrains his freedom. Id. Thus, the relevant question for this Court to answer is whether the officers' acts of approaching appellant, requesting identification and checking that identification for outstanding warrants constitute an investigative stop or detention.

The record reflects that Officers Cates and Berlingeri approached appellant and his companion and asked for their

identifications, and they complied. As Officer Cates engaged in casual conversation with the two men, Officer Berlingeri took the identifications to the patrol car and checked them for warrants with the police dispatcher. After approximately five minutes, Berlingeri was informed that the two men had possible outstanding warrants. After receiving this information, Officer Cates patted down appellant for weapons and found none. After another 30-40 minutes, confirmation was received that there was an outstanding warrant for appellant's companion. While awaiting for the confirmation of appellant's possible warrant, appellant ran from the officers. Officer Knox followed him and saw what later was determined to be a gun fall from appellant's waist. Officer Berlingeri then tackled appellant and placed him under arrest.

In *Holladay v. State*, 805 S.W.2d 464 (Tex.Crim. App. 1991), the Court of Criminal Appeals held that a narcotics officer's demand for identification was not a detention, but that his subsequent request to search the defendant's bag, "which was a continuum of the initial encounter," converted the initial request for identification into a "very brief" detention.

This Court has held that an officer, by approaching an individual, asking to see his plane ticket and driver's license, asking if he was carrying any narcotics in the suitcase and asking for permission to search his suitcase, detained the individual. *Walton v. State*, 827 S.W.2d 500, 502 (Tex.App.--Houston [1st Dist.] 1992, no pet.).

It was also held in *Peterson*, 857 S.W.2d at 931, that an officer's request to see the defendant's ticket and identification at a bus terminal did not constitute a detention; however, the defendant was found to be detained once the officers stated they were conducting a narcotics investigation and asked to search his bags.

In the present case, Officers Cates and Berlingeri did not detain appellant, in the legal sense, when they initially approached him and his companion, asked them questions and requested their identification. In light of *Peterson*, *Walton* and *Holladay*, however, an investigatory detention did occur when Officer Berlingeri took their identifications to the squad car and requested the dispatcher search for outstanding warrants.

To justify an investigative detention, there must be some indication or reasonable inference of criminal conduct. *Garza v. State*, 771 S.W.2d 549, 558 (Tex. Crim. App. 1989). The circumstances must be sufficiently probative to support a reasonable suspicion of criminal misconduct, *Crocket v. State*, 803 S.W.2d 308, 311 (Tex. Crim. App. 1991), and the suspicious conduct must be distinguishable from that of innocent people under the same circumstances as to clearly, if not conclusively, set the suspect apart from them. *Brooks v. State*, 830 S.W.2d 817, 820-21 (Tex. App.--Houston [1st Dist.] 1992, no pet.) (citing *Brown v. Texas*, 443 U.S. 47, 52, 99 S.Ct. 2637, 2641 (1979)).

Chief Knox, responding to questions asked by the trial judge, testified as to the following:

> The Court: What did this defendant do when you had him under surveillance that looked suspicious?
>
> Knox: The area is well known for drug trafficking, and he was just hanging around and motioning to cars that came in.
>
> The Court: Was this defendant motioning to cars?
>
> Knox: Yes, and the other buddy was his tagalong. Wherever he went the other went.
>
> The Court: Cars came in?

Knox: Yes, but they never got out and talked to him, got out and went to the store or to the hamburger stand.

The Court: But no one seemed to respond to the motion?

Knox: No, sir.

On direct examination, Officer Cates testified:

Question: Now, when you arrived there, had you -- what if anything, had you seen -- had the defendant and the other person do that was illegal?

Cates: Nothing.

Question: What, if anything, had you seen the defendant or other person do that in any way aroused reasonable suspicion when you stopped them?

Cates: Nothing.

Question: So you just approached them because Knox told you to.

Cates: That's right.

In its appellate brief, the State does not argue that prior to approaching appellant and his companion, reasonable suspicion existed to believe appellant was engaged in illegal conduct. The State argues that the encounter between appellant and the officers did not rise to the level of a stop or detention such that fourth amendment safeguards were required and in the alternative, that if the encounter were found to be a detention lacking probable cause, the discovery of the outstanding parole violation warrant attenuated any taint in the discovery of the weapon.

The testimony of Chief Knox and Officer Cates reveal that reasonable suspicion was not present. Chief Knox testified that: (1) an unknown individual approached him and told him that there

was someone at the front selling drugs and was carrying a gun, (2) the front was an area known for its drug trafficking, and (3) he saw appellant hanging around and motioning cars but no one from these cars spoke with appellant or even "seemed to respond to the motion." Officer Cates testified that nothing appellant did in any way aroused suspicion that he was engaged in criminal conduct. Therefore, there was no reasonable inference of criminal conduct so as to justify the initial detention of appellant. *See Garza*, 771 S.W.2d 549; *see also Brooks*, 830 S.W.2d at 820.

However, the discovery of an outstanding warrant during an illegal detention of an individual may break the connection between the primary taint and subsequently discovered evidence. *Welcome v. State*, 864 S.W.2d 128, 133 (Tex. App.–Dallas 1993, pet. ref'd); *Brooks*, 830 S.W.2d at 821.

In *Brooks*, there was no indication that the defendant was involved in any illegal activity other than the fact that he was seen leaving the scene of a burglary in progress. The defendant was asked for identification and a subsequent computer search revealed outstanding warrants for his arrest. Prior to the computer search, defendant was allowed to stay in his car and no search was conducted. This Court eventually found this detention to be legal and based upon reasonable suspicion under the circumstances, but noted:

> We further recognize that even in a situation involving an illegal detention, where a valid warrant for the appellant's arrest is discovered, and the appellant is arrested under the authority of that warrant, evidence found during a subsequent inventory search pursuant to the arrest is admissible into evidence against the appellant.

Brooks, 830 S.W.2d at 821.

Here, as the officers were waiting for confirmation of appellant's outstanding warrant, which was in fact later confirmed, appellant ran from the officers. It was while appellant was running from the officers that he dropped the gun. Therefore, the discovery of the gun by the officers was sufficiently independent so as not to be tainted by the initial illegal detention of appellant.

In *Johnson v. State*, 496 S.W.2d 72 (Tex. Crim. App. 1973), the Court of Criminal Appeals held that in spite of the fact that the defendant's arrest was illegal, the later acquired knowledge of an outstanding arrest warrant rendered his detention legal and the incriminating evidence obtained during the period of the detention was sufficiently distinguishable from the underlying illegal arrest to be purged from the primary taint. (citing *Dugger v. State*, 402 S.W.2d 178, 179-80 (Tex. Crim. App. 1966), which held that an illegal arrest does not render inadmissible evidence thereafter obtained if detention following initial illegal arrest lawful).

We overrule appellant's point of error and affirm the judgment of the trial court.

/s/ Alice Oliver-Parrott
Alice Oliver-Parrott
Chief Justice

Justices Mirabal and Wilson also sitting.

Do not publish. Tex. R. App. P. 90.

Judgment rendered and opinion delivered Jan. 29, 1996
True Copy Attest:

/s/ Margie Thompson
Clerk of Court

APPENDIX 2

BEST AVAILABLE COPY

FIRST COURT OF APPEALS
1307 San Jacinto, 10th Floor
Houston, Texas 7

February 5, 1996

RE: Case No. 01-95-00433-CR

Style: Booth, Patrick Lee
v. The State of Texas

Please be advised appellant's motion for rehearing was filed today in the above referenced cause.

T. C. Case # 686,062

Margie Thompson, Clerk

Timothy Hootman
908 W. Main St.
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FIRST COURT OF APPEALS
1307 San Jacinto, 10th Floor
Houston, Texas

February 8, 1996

RE: Case No.: 01-95-00433-CR

Style: Booth, Patrick Lee
v. The State of Texas

On this day came on to be considered the Appellant's(s) motion for rehearing. And such motion is hereby OVERRULED.

T. C. Case # 686,062

Margie Thompson, Clerk

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908 W. Main St.
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APPENDIX 3

FIRST COURT OF APPEALS
1307 San Jacinto, 10th Floor
Houston, Texas 7

March 8, 1996

RE: Case No. 01-95-00433-CR

Style: Booth, Patrick Lee
v. The State of Texas

Please be advised applicant's petition for descretionary review has been filed in the above referenced cause.

T. C. Case # 686,062

Margie Thompson, Clerk

Timothy Hootman
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OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS

June 19, 1996

COA#: 01-95-00433-CR

RE: Case No. 0505-96

STYLE: BOOTH, PATRICK LEE

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

Troy C. Bennett, Jr., Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

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